

**BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS**

In the Matter of the Application of:

OZARKS MEMORIAL CREMATORY LLC

ORDER ISSUING
PROBATED FUNERAL ESTABLISHMENT LICENSE

The Missouri State Board of Embalmers and Funeral Directors (the “Board”) pursuant to Section 324.038, RSMo¹, issues this order issuing a **PROBATED FUNERAL ESTABLISHMENT LICENSE** to Ozarks Memorial Crematory LLC (“Licensee or “Ozarks Memorial Crematory”) located at 211 Second Street, Houston, Missouri 65483.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board’s decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee’s profession. If such review is

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.061.1, RSMo, states:

1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

3. Section 333.330, RSMo, authorizes the Board to deny an application for a funeral establishment license and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

(14) Violation of any professional trust or confidence;

4. Relevant portions of 20 CSR 2120-2.060 state:

(23) The business and practice of funeral directing may be conducted only from a fixed place or establishment which has been licensed by the board.

5. Relevant portions of 20 CSR 2120-2.070 state as follows:

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo,

* * *

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.

(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

Parties and Background

6. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

7. Ozarks Memorial Crematory LLC is a Missouri limited liability corporation, in good standing.

8. Ozarks Memorial Crematory applied for a Missouri funeral establishment license by filing its "Application for a Funeral Establishment License" (the "Application") that the Board received on July 29, 2013.

9. On August 1, 2013, the Board notified Ozarks Memorial Crematory of information it needed to submit to the Board to complete its application.

10. On August 5, 2013, Ozarks Memorial Crematory responded with some of the information.

11. On August 6, 2013, the Board notified Ozarks Memorial Crematory that it still needed to submit a copy of its zoning permit.

12. On August 28, 2013, the Board conducted its pre-licensure inspection of the facility proposed for licensure by Ozarks Memorial Crematory.

13. On August 29, 2013, the Board, via facsimile transmission, informed Licensee that its application was not complete and also informed Licensee that it needed to provide the correct physical address for its funeral establishment .

14. The Board received no response to the August 29, 2013 fax to Licensee.

15. On April 25, 2014, the Board again contacted Licensee to inquire whether it intended to complete its application for a funeral establishment license and again advised Licensee of what it needed to submit to complete its application.

16. On April 25, 2014, the Board, via e-mail, advised Licensee that it had no authority to operate as a crematory until its license was issued and also requested that Licensee provide the Board a copy of its cremation log, its business license and an application that listed the correct address for the funeral establishment.

17. On April 25, 2014, Licensee completed its application for a funeral establishment license.

18. On April 25, 2014, Licensee provided the Board with copies of its cremation log.

19. Between August 27, 2013 and April 24, 2014, Ozarks Memorial Crematory cremated 96 dead human bodies.

20. Upon receipt of notice from the Board that they must cease operations as a crematory because they held no license to operate, Ozarks Memorial Crematory ceased operations.

21. By e-mail sent April 25, 2014, Ozarks Memorial Crematory requested to meet with the Board to discuss its pending application for a funeral establishment license.

22. By letter dated April 28, 2014, the Board granted Ozarks Memorial Crematory's request to appear before the Board to discuss its application for a funeral establishment license.

23. On May 5, 2014, Ozarks Memorial appeared before the Board and discussed with the Board its pending application for a funeral establishment license and the reasons why it operated before a license was issued.

Conclusions of Law

24. Ozarks Memorial held out to the public, practiced and represented itself as a licensed funeral establishment at a time when it held no such license and

thus the Board has cause to deny the Application pursuant to Section 333.330.2 (6), (7), and (14).

25. The Board finds that issuance of a probated funeral establishment license, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues a funeral establishment license to Ozarks Memorial Crematory, LLC, on **PROBATION** for a period of **ONE YEAR** (the “Disciplinary Period”) subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of the Disciplinary Period

26. Licensee shall comply with the following terms and conditions of during the Disciplinary Period:

- a. Licensee shall keep the Board informed at all times of its current address and telephone number at each place of business. If there is a change in address or telephone number, Licensee shall inform the Board, in writing, no later than 5 days after the change occurs;
- b. Licensee shall timely renew all licenses issued by the Board including its funeral establishment license and comply with all statutes, regulations and reporting requirements to maintain these licenses in a current and active status;

- c. Licensee shall comply with all provisions of Chapters 194, 333 and 436, RSMo, all regulations imposed under the authority of these statutes, and all laws and regulations of any state including Missouri and all other states and territories of the United States, and all federal laws and regulations related to the operation of a funeral related business and applicable to persons and entities engaged in the funeral and death care industry;
- d. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- e. Upon the Board's request, Licensee shall appear before the Board or its representative for personal meetings;
- f. Licensee shall accept and cooperate with visits, whether scheduled or unannounced, from the Board's duly authorized representatives to monitor Licensee's compliance with these terms and conditions;
- g. Upon request by the Board or its designee, Licensee shall submit any and all records requested to show compliance with these terms and conditions. These records shall be timely submitted per the request of the Board; and
- h. Licensee shall submit written reports to the Board on or before January 1 and July 1 of each year during the Disciplinary Period in which Licensee shall state truthfully whether it has fully complied

will all terms and conditions of the Disciplinary Period and shall fully describe any non-compliance.

27. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's funeral establishment license shall be fully restored if all other requirements of the law have been satisfied.

28. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

29. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke or otherwise lawfully discipline the licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

30. The Board shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

31. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: 5-21-2014

Sandy Sebastian
Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors